

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Creation of a Low Power Radio Service)	MB Docket No. 99-25
)	
Amendment of Service and Eligibility)	MB Docket No. 07-172
Rules for FM Broadcast Translator)	
Stations)	
)	

OPPOSITION OF PROMETHEUS RADIO PROJECT
TO PETITION FOR RECONSIDERATION OF LIFETALK RADIO, INC.

Prometheus Radio Project submits this filing in opposition to the Petition for Reconsideration filed in this docket by LifeTalk Radio, Inc. (“LTR”).¹ LTR’s request seems to urge the Commission to do two things: 1) amend § 73.858(b) to expand LPFM eligibility to unincorporated chapters of national organizations with other attributable broadcast interests, and 2) broaden the “diversity of ownership” selection criterion so that it does not disadvantage chapters of national organizations with other attributable broadcast interests. The Commission should dismiss the Petition with respect to the first point, because § 73.858(b) is not new and was not amended in the November 2012 Order, and thus is not the appropriate subject of a reconsideration proceeding at this point in time. Moreover, § 73.858(b) is in the public interest, ensuring that scarce LPFM licenses are awarded to genuine local organizations. On the second point, the Commission should dismiss the Petition because the “new entrant” selection criterion as adopted better allocates scarce LPFM frequencies in the public interest.

¹ LifeTalk Radio, Inc., *Petition for Reconsideration*, filed Jan. 10, 2013.

I. THE COMMISSION SHOULD NOT AMEND 73.858(B).

As explained above, LTR's Petition is untimely with respect to 73.858(b) and should therefore be dismissed as to that rule. Even if the Commission determines that the Petition is not untimely on this point, however, Prometheus opposes the Petition. LTR argues that 73.858(b) should be amended not to preclude an unincorporated local chapter of an incorporated parent with other broadcast interests from LPFM ownership, as long as the chapter has a separate local mission. In support of this argument, LTR cites a 2007 Media Bureau decision favoring an LPFM applicant that was an unincorporated local chapter of a national organization. LTR suggests that the decision contradicted 73.858(b) as written, illustrating a need for the rule to be amended. But this suggestion mischaracterizes the limited decision made in that case. In that case the applicant, Montmorenci United Methodist Church ("MUMC"), was an unincorporated chapter of a national organization that was itself unincorporated. Ruling that MUMC qualified for the cross-ownership exception set forth in 73.858(b) despite being unincorporated, the Media Bureau noted that this "rule is designed to limit the attribution of the parent's media interests in situations in which the applicant has both a distinct legal status and a local presence and mission." The Commission explained,

It therefore follows that a local entity applying for an LPFM license that is affiliated with an unincorporated national organization need not be incorporated to qualify for the exception. In this regard, MUMC has met its burden. As stated in the Letter Decision, "[A]lthough MUMC is not incorporated, it has clearly demonstrated that it is lawful, locally organized, and independent of the national UMC."²

² *Letter to Dianne Johnston and Rick Anderson*, Ref. 1800B3-BSH (MB June 19, 2007) (citing *Letter to Donald E. Martin, Esq. Henry A. Solomon, Esq., and Vernon G. Snyder*, Ref. 1800B3-SS (MB Apr. 19, 2005)).

Thus, contrary to LTR's assertion, the Media Bureau's decision with respect to MUMC did not contradict 73.858(b), but merely applied it to a circumstance in which the national organization itself lacked incorporation. Were MUMC a member of an incorporated national organization, then MUMC would indeed have needed its own local incorporation to comply with LPFM ownership limits.

As the Commission noted, MUMC also demonstrated its independence and a long documented history of local activities and a local headquarters. We note that even when separately incorporated, chapters of national organizations should have a high burden of proof to demonstrate their local existence. National organizations whose interest in LPFM is primarily to syndicate their own programming have previously sought to create sham applicants to obtain licenses without genuine local community involvement. We therefore urge the Commission to maintain the integrity of LPFM ownership limitations in both the rules and their application during licensing.

II. THE COMMISSION SHOULD KEEP THE NEW ENTRANT POINT AS ADOPTED AND APPLY IT ONLY TO ENTITIES THAT ARE INCORPORATED SEPARATELY FROM THEIR PARENT ORGANIZATION.

LTR asks the Commission to "remove the comparative burden" from applicants that are chapters of national organizations, apparently seeking an amendment of the "new entrant" criterion to allow a chapter of a parent organization with attributable broadcast interests to qualify. Not to allow this, LTR contends, is "internally inconsistent and incoherent" vis-à-vis § 73.858(b). Prometheus disagrees. Section 73.858 and the "new entrant" criterion serve different purposes. While § 73.858 (in combination with § 73.860) precludes national organizations with broadcast holdings from participating in LPFM, the "new entrant" criterion aims to prioritize those LPFM applicants most likely to bring unique viewpoints to the air over other mutually exclusive applicants. It makes sense for a greater number of applicants to meet the

threshold eligibility criteria, while only a smaller subset can qualify for the “new entrant” comparative criterion.

Moreover, the “new entrant” comparative selection criterion furthers the Commission’s interest in broadcast ownership diversity. Although separately incorporated chapters of a national organization may indeed have a distinct local presence and mission and should therefore not be prohibited from LPFM ownership, the Commission may nonetheless offer a comparative preference for independent organizations that represent truly new voices on the airwaves. With a scarcity of licenses to award, the Commission has an interest in ensuring that the LPFM service is not dominated by a few national organizations, even if their chapters are locally distinct.

As a community broadcasting service, LPFM has been designed to lower the barrier to entry for local organizations to serve local needs. As stated above, we believe that separately incorporated chapters may indeed serve local needs, as long as these groups demonstrate their local mission and presence. However, we believe that the Commission’s “new entrant” point appropriately creates a preference for groups that increase the ownership diversity of the service. These groups, unaffiliated with national organizations, are those most likely to benefit from the lower barrier to entry provided by the LPFM service. Increasing radio ownership diversity has been a key goal of the LPFM service since its inception.³ Although the Commission has determined that a chapter of a national organization is “good enough” to be eligible, the Commission may

³ *Creation of a Low Power Radio Service*, Report and Order, MM Dkt. No. 99-25, 15 FCC Rcd. 2249 (rel. Jan. 27, 2000), 65 Fed. Reg. 7616 (Feb. 15, 2000), at ¶ 163 (“the goals of this new service, to foster opportunities for new radio broadcast ownership and to promote additional diversity in radio voices and program services”), ¶ 17 (“we nonetheless conclude that a noncommercial service would best serve the Commission’s goals of bringing additional diversity to radio broadcasting and serving local community needs in a focused manner.”).

certainly also determine that a locally independent organization is “even better” in a competition for scarce licenses.

III. CONCLUSION

For the foregoing reasons, Prometheus urges the Commission to dismiss LTR’s Petition for Reconsideration.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I, Brandy Doyle, Policy Director, Prometheus Radio Project, do hereby certify that, on March 21, 2013, pursuant to the 47 C.F.R. § 1.429, a copy of the foregoing Opposition was served by first class U.S. mail, postage prepaid, upon the Petitioner:

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Respectfully submitted,

/s/

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March 21, 2013